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## THE RECOGNITION OF CUBAN BELLIGERENCY.

THE United States is asked to recognize the Cuban insurgents as belligerents. To do this is a serious step, involving grave international consequences; such a step must not be taken as a mere holiday pastime, in gayety of heart at the appearance of a new popular uprising; if it is to be taken, it must be with the utmost care, and with a knowledge of its legal bearings and of its consequences. I propose in this paper to state the considerations, legal and otherwise, which govern the recognition of belligerency in every case; and afterwards to apply the principles thus stated to the case of Cuba.

It is necessary at the outset to distinguish three similar things: intervention, recognition of independence, and recognition of belligerency. Intervention is an actual interference in the affairs of a friendly nation, sometimes thought to be justifiable, but not usually consistent with our national policy of neutrality. Recognition of independence is the reception of a new nation into the family of nations, on the ground that it has in fact established itself as a separate and independent political body. Recognition of belligerency does not admit the belligerent into the family of nations, or even acknowledge its actual existence as a state, but only that it claims to be a state and is *de facto* making war as such. In our Revolution, France intervened, taking part in the war between us and England. We recognized the independence of the South American republics after they had conclusively proved their separation in fact from Spain. England and France recognized the belligerency of the Confederate States, but steadily refused to recognize or deal with them as an independent nation.<sup>1</sup>

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<sup>1</sup> A fourth thing, insurgency (distinguished from belligerency), is not usually recognized by writers on international law; but it seems to be a possible thing. In case of an insurrection there may be actual hostilities, but no belligerency, because there is no political organization on the part of the insurgents; or belligerency may in fact exist, but a state may not wish or need to recognize it. It may nevertheless be necessary to recognize the existence of hostilities, either to avoid dealing with an insurgent as a pirate, or to warn citizens against taking part in the contest. Such a recognition is of insurgency, not of belligerency. The distinction was first expressly pointed out (though not by any means first made) by President Cleveland in his first annual message (see 33 Alb. L. J. 125), and again in his seventh annual message of 1895.

Intervention in Cuba would mean taking part in the contest there on one side or the other; recognition of Cuban independence would mean recognition of her separation from Spain as an accomplished fact. The latter course is impossible; no one advocates the former. Recognition of the belligerency of the insurgents is the only course urged.

The right to recognize belligerency rests upon two circumstances: the existence in fact of what in international law is regarded as legal war, and the necessity on the part of the nation which acts, of recognizing the existence of that fact.<sup>1</sup>

War, in law, is not a mere contest of physical force, on however large a scale. It must be an armed struggle, carried on between two political bodies, each of which exercises *de facto* authority over persons within a determinate territory, and commands an army which is prepared to observe the ordinary laws of war.<sup>2</sup> It requires, then, on the part of insurgents an organization purporting to have the characteristics of a state, though not yet recognized as such. The armed insurgents must act under the direction of this organized civil authority. An organized army is not enough. And all this, of course, must take place within the territorial limits recognized by foreign States as part of the parent country.<sup>3</sup>

When once we realize that belligerency is a fact, we can see the extreme difficulty of determining the fact. It is a question of the state of internal affairs in another nation. We have, as a nation, no regular way of knowing what takes place in a foreign country except through our Ambassador or Minister there. But the Ambassador's relations are with the parent government, which seldom acknowledges the belligerent status of insurgents; and he lives in the capital, which is usually far from the seat of war. Information from our consuls in the insurgent territory cannot be regarded as trustworthy, for they are appointed as mere business

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<sup>1</sup> Dana's Wheaton, note 15; Calvo, *Droit Intern.*, 4th ed., vol. i. p. 238; Hall, *Intern. Law*, 3d ed., p. 31; Walker's *Science of Intern. Law*, p. 115.

<sup>2</sup> This definition is taken, with a little change, from Walker, *loc. cit.* See also Dana's Wheaton.

<sup>3</sup> The reason for this requirement is plain. We must have some political organization responsible for what takes place in all the territory of the civilized world. By recognizing the belligerency of insurgents, we free the parent country from all responsibility for what takes place within the insurgent lines (Dana's Wheaton, note 15, p. 35). The insurgents, therefore, must have an organization in that territory which can be held responsible for injury. Belligerents, in the legal sense, not only fight, they fight as a state fights, claiming to be a state, and expecting, if successful, to be recognized as such.

agents, not as vehicles of information on the affairs of state. Such information as may be gathered by newspaper correspondents is of course not such as the government may rely on. Trustworthy information sometimes comes from the government itself which is attacked. This happened (in cases about to be examined), where Colombia informed us of an insurrection in her territory, and requested us to treat the insurgents as pirates; and where our Minister informed Belgium of our rebellion, and requested the issuance of a proclamation against privateering. Our knowledge of the insurrection may be obtained from an invasion of our soil by the parties, as happened in the Canadian insurrection of 1837. If these means of information fail, the only safe course would seem to be that usually pursued by our government when a new state or government claims recognition as such, and the claim is disputed; that is, a special commission should be sent to investigate and report upon the facts. Until information of the nature of the contest is obtained by our government in some such way, it is both undignified and unsafe to attempt to determine the state of facts in a foreign country.

Supposing the existence of belligerency to have become known as a fact, the necessity of formally recognizing that fact remains to be shown. "To precipitate recognition must be regarded as an inimical act towards the original state government."<sup>1</sup> This necessity also is a matter of fact, and one the decision of which is a political, not a judicial question, but a question of the greatest delicacy, which ought to be determined only after a careful study of the precedents, both American and European. Let us therefore examine historical instances of the recognition of belligerency.

The first occasion for action on the part of the United States in the case of a war for independence occurred when the South American colonies of Spain revolted, early in the century. The first province to revolt was Buenos Ayres, which began hostilities in 1810, though the actual declaration of independence did not occur till 1816. On September 1, 1815, President Madison issued the following proclamation.<sup>2</sup>

"Whereas information has been received that sundry persons, citizens of the United States, . . . are conspiring together to begin or set on foot . . . a military expedition or enterprise against the dominions of Spain,

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<sup>1</sup> Walker's Science, p. 117.

<sup>2</sup> Amer. State Papers, For. Relations, vol. iv. p. 1.

with which the United States are happily at peace: . . . I have therefore thought fit to issue this my proclamation, warning and enjoining all faithful citizens . . . to withdraw from the same without delay."

It will be noticed that in this proclamation the President refrained from the recital of a revolt in the Spanish provinces. The first official notice of the civil war seems to have occurred in the message of President Monroe to Congress, November 17, 1818.<sup>1</sup> This appears to have been relied on by the courts of the United States as a recognition by the executive of the belligerency of Spanish America.<sup>2</sup> The President simply stated that "the civil war which has so long prevailed between Spain and the provinces in South America, still continues without any prospect of its speedy termination."

When Texas revolted from Mexico, its belligerency seems in the same way to have been assumed, but never to have been recognized in any formal manner. The first public notice taken of this rebellion seems to have been connected with the recognition of her independence.<sup>3</sup>

Only once, apparently, has a President by his proclamation called the attention of the country to a foreign insurrection: this was in the case of the Canadian revolt of 1837.

An insurrectionary movement was made in Upper Canada with a view to reforming the government. The insurgents formed a provisional government, with one Mackenzie as chairman *pro tem*. Navy Island, in the Canadian portion of the Niagara River, was occupied, and a proclamation issued from there calling for aid in revolutionizing the province. One Van Rensselaer, an American citizen, was given command of the forces. The steamboat *Caroline*, owned by an American citizen, was said to be helping the insurgents. Under orders from the British commander, a party crossed the river, took possession of the *Caroline* within the territory of New York, drove off her crew, destroyed her, and returned to Canada.<sup>4</sup>

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<sup>1</sup> 4 Wheat. App. 23.

<sup>2</sup> The Divina Pastora, 4 Wheat. 52 (1819).

<sup>3</sup> Congress passed a resolution looking toward recognition of the independence of Texas, June 18, 1836; the President then communicated to Congress such information as he had (24 Br. & For. St. Pap. 1267), and appointed a Commissioner to investigate, whose reports were transmitted to Congress a few months later (25 *id.* 1352), with a message advising that recognition of independence be delayed. Recognition of belligerency seems never to have been desired.

<sup>4</sup> For this statement I am principally indebted to Dr. Snow, Cas. and Op. on Intern. Law, p. 177.

This occurred on December 29, 1837; a week later, on January 5, 1838, President Van Buren issued this proclamation: —

“Whereas information having been received of a dangerous excitement on the northern frontier of the United States, in consequence of the civil war begun in Canada; . . . that arms and munitions of war and other supplies have been procured by the insurgents in the United States; that a military force, consisting in part, at least, of citizens of the United States, had been actually organized, had congregated at Navy Island, and were still in arms under the command of a citizen of the United States, and that they were constantly receiving accessions and aid:

“Now therefore . . . I, Martin Van Buren, do most earnestly exhort all citizens of the United States who have thus violated their duties, to return peaceably to their respective homes; and I hereby warn them that any persons who shall compromise the neutrality of this government by interfering in an unlawful manner with the affairs of the neighboring British provinces, will render themselves liable to arrest and punishment.”<sup>1</sup>

The Governors of the States of New York and Vermont had previously issued similar proclamations; and finally the President issued a second proclamation reiterating the warnings of the first, on November 21, 1838.<sup>2</sup>

No formal action was taken, nor was there even an informal recognition of belligerency in the case of several revolts in which the people of the United States took an intense and friendly interest, though they may for a time have seemed sure to succeed. Such revolts were those of Greece, Hungary, Sicily, Poland, and Cuba. In several cases inquiry was made as to the probability of success: in the cases of Spanish America and of Hungary, commissioners were sent by the President to investigate the state of affairs; but this was with a view to recognizing independence, if it existed. Secretary Cass was quite justified in writing to the Peruvian Minister in 1858, —

“By what public act, whether proclamation or otherwise, this recognition [of belligerency] must take place I have not found laid down. I am not aware that, in this country, any solemn proceeding, either legislative or executive, has been adopted for the purpose of declaring the status of an insurrectionary movement abroad, and whether it is entitled to the attributes of a civil war; unless, indeed, in the formal recognition of a portion of an empire seeking to establish its independence, which in fact does not so much admit its existence as it announces its result, at

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<sup>1</sup> 38 Br. & For. St. Pap. 1074.

<sup>2</sup> 26 Br. & For. St. Pap. 1324.

least as far as regards the nation thus proclaiming its decision. But that is the case of the admission of a new member into the family of nations."<sup>1</sup>

In 1885 it became necessary for the United States to declare its position with regard to insurgents in the United States of Colombia. The government of that country asked us to declare public vessels of the insurgents piratical. Secretary Bayard declined to do so; and President Cleveland, in his Message of December 8, 1885, said that the request could not be granted consistently with the principles of international law. "The denial by this government of the Colombian propositions," he added, "did not however imply the admission of a belligerent status on the part of the insurgents."<sup>2</sup>

The action of the United States may be summed up as follows: She has taken formal action to recognize a state of civil war only when a hostile expedition has entered her own territory, so that knowledge of belligerency was obtained within her own borders. She has informally recognized such belligerency only when it was in adjoining territory, or when it was forced upon her by contact with ships of war of insurgents; and she has even in that case acted with great moderation. Her attitude as to recognition of the Confederate States as belligerents will be examined later.

The first British proclamation of neutrality in case of civil war followed soon after Madison's, and upon the same occasion; but in it the existence of civil war was recognized.

"Whereas there unhappily subsists a state of warfare between His Catholic Majesty, and divers provinces or parts of provinces in Spanish America," all British subjects were warned not to enter the army or navy of such provinces, or of His Catholic Majesty; such subjects of Great Britain as had already been allowed to enter the service of the King of Spain were however allowed to remain in it, on condition of not serving against the revolted provinces.<sup>3</sup>

The next proclamation of neutrality in case of a civil war was

<sup>1</sup> 50 Br. & For. St. Pap. 1152.

<sup>2</sup> An insurgent vessel having been captured and brought into a District Court of the United States as a pirate, Judge Brown held that she was a pirate by the law of nations; but that the executive action had recognized the insurgents as belligerents. *The Ambrose Light*, 25 Fed. 408. These assertions, thus directly opposed to the opinion of the executive department, were vigorously combated in an article by Francis Wharton, then Solicitor for the Department of State, 33 Alb. L. J. 125.

<sup>3</sup> 4 Br. & For. St. Pap. 488 (Nov. 27, 1817).

drawn out by the frequent enlistments of British subjects in the Greek revolution. The date of the proclamation was September 30, 1825, four years after the declaration of independence by Greece.

"Whereas the Ottoman Porte, a power at peace with His Majesty, is and has been for some years past engaged in a contest with the Greeks, in which contest His Majesty has observed a strict and impartial neutrality," and now certain British subjects were threatening to enlist under the Greek flag, they were warned not to take service with either party.<sup>1</sup>

The Turkish government remonstrated on the ground that —

"The British government allowed to the Greeks a belligerent character, and observed that it appeared to forget that to subjects in rebellion no national character could properly belong. But the British government informed Mr. Stratford Canning that 'the character of belligerency was not so much a principle as a fact; that a certain degree of force and consistency acquired by any mass of population engaged in war entitled that population to be treated as a belligerent, and even if their title were questionable, rendered it the interest well understood of all civilized nations so to treat them; for what was the alternative? A power or a community (call it which you will) which was at war with another, and which covered the sea with its cruisers, must either be acknowledged as a belligerent or dealt with as a pirate;' which latter character as applied to the Greeks was loudly disclaimed."<sup>2</sup>

The next recognition by Great Britain of a foreign civil war was on May 13, 1861, when the Confederate States were recognized as belligerents.

"Whereas hostilities have unhappily commenced between the government of the United States of America and certain States styling themselves the Confederate States of America, and whereas we . . . have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties," all subjects of the Queen were warned to observe a strict neutrality, and not to enter the service of either party, and to respect a blockade lawfully established by either party of the ports of the other.<sup>3</sup>

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<sup>1</sup> 12 Br. & For. St. Pap. 525.

<sup>2</sup> Quoted in Lord Russell's speech, May 6, 1861, Hansard, vol. 162, p. 1566. I find it in Bemis, *Rebel Belligerency*, p. 6.

<sup>3</sup> 51 Br. & For. St. Pap. 165.



This proclamation at once aroused a vigorous protest in the United States. The ground formerly taken by the Porte, that a foreign country had no legal right to recognize a rebel as belligerent, was not adverted to; objection was made to the haste of the proclamation, and to certain of its phrases, which were thought to put the parties on a gratuitous and offensive equality.<sup>1</sup>

Mr. Adams, then Minister of the United States, near the Queen, took the former ground only. He characterized the Queen's proclamation as "unprecedented and precipitate."

"He contrasted it with the long period which elapsed between the beginning of the Greek insurrection and our admission of the belligerent character of Greece. I said that the population of the seceding States, amounting to many millions, made them of greater importance than Greece in the early days of her independence, and the critical position of our commerce made it necessary to take some step."<sup>2</sup>

Mr. Adams laid down this rule:<sup>3</sup>—

"Whenever an insurrection against the established government of a country takes place, the duty of governments, under obligations to maintain peace and friendship with it, appears to be, at first, to abstain carefully from any step that may have the smallest influence in affecting the result. Whenever facts occur of which it is necessary to take notice, either because they involve a necessity of protecting personal interests at home, or avoiding an implication in the struggle, then it appears to be just and right to provide for the emergency by specific measures, precisely to the extent that may be required, but no farther. It is, then, facts alone, and not appearances or presumptions, that justify action. But even these are not to be dealt with farther than the occasion demands; a rigid neutrality in whatever may be done is of course understood. If, after the lapse of a reasonable period, there be little prospect of a termination of the struggle, especially if this be carried on upon the ocean, a recognition of the parties as belligerents appears to be justifiable; and at that time, so far as I can ascertain, such a step has never in fact been objected to."

Lord Russell assented to this statement of principle, and contended that a necessity had arisen for England to act.<sup>4</sup>

<sup>1</sup> Bemis, *Rebel Belligerency*, pp. 8 and 9, and *passim*.

<sup>2</sup> Lord John Russell to Lord Lyons, May 21, 1861; 51 Br. & For. St. Pap. 193.

<sup>3</sup> Dana's *Wheaton*, note 15, p. 37.

<sup>4</sup> "Le précédent historique, que nous venons d'emprunter à deux puissances de premier ordre, résout pratiquement de la manière la plus précise et la plus satisfaisante la question de la déclaration et de la reconnaissance du titre de belligérant." Calvo, *Droit International*, 4th ed., vol. i. p. 239.

The same complaint was made against France, upon her recognition of the Confederate States as belligerent a few weeks later; but no further act of France which seemed unfriendly followed, and all bitterness of feeling against it soon disappeared.<sup>1</sup>

In curious contrast to the feeling in this country against England and France was that against Russia, though except in form she went as far as those countries. This is clear from an account by Mr. Appleton, our Minister near the Czar, of an interview with Prince Gortchacow.<sup>2</sup> The Prince said:—

“There was no blockade of southern ports, and any informality in the papers of ships which cleared there would be overlooked. This, he said, was the course determined on by England and France, and he understood it was pursued also by our own government. I told him . . . that American ships ought to carry the American flag, and be provided with American papers; and if this was not done, or, still more, if the American character was repudiated, I hardly saw how they could be recognized as American ships. He said there were some difficulties certainly in the way; but it was better to overlook them, and to receive the ships for just what they were, vessels belonging to the United States, but not provided, in consequence of existing troubles, with the usual evidence of nationality. I said they might deny that they belonged to the United States. He replied that this would not alter the fact. They came from ports in the United States, and the separation of the Confederate States was not yet recognized. The policy, he said, involved no recognition of nationality, but was only a concession in aid of commerce. I replied that my only interest was to prevent this recognition. We desire to be permitted to work out the pending questions in the Union in our own way.”

In accordance with this policy were the following instructions to the Commander in Chief of the Port of Cronstadt.<sup>3</sup>

“The flag of men-of-war belonging to the seceded States must not be saluted. That there may be no obstacle in the way of commerce, merchant vessels of the seceded States are to be treated according to the rules acted on by us with regard to Italian merchant vessels sailing under the Italian flag,<sup>4</sup> *i. e.* according to the treaties that are at present in force. . . . Should the crews of vessels belonging to the seceded States not wish to acknowledge the authority of the Consuls appointed by the Federal Government of Washington, then in case of dispute they

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<sup>1</sup> 51 Br. & For. St. Pap. 1137 (June 10, 1861).

<sup>2</sup> 51 Br. & For. St. Pap. 99.

<sup>3</sup> 51 Br. & For. St. Pap. 100.

<sup>4</sup> The new Kingdom of Italy was not yet recognized.

must abide by the decision of our local authorities, in the same manner as foreigners whose governments have no representatives in our empire."

The other nations of Western Europe also took action in the matter. The action of Spain, while "less objectionable than some other documents which have seen the light in Europe,"<sup>1</sup> was not liked in the United States. It recognized a "contest begun between the Federal States of the Union and the States confederated at the South." Portugal, while declining to accept certain suggestions of the American Minister, issued a proclamation on the whole acceptable. Our Minister "notified M. d'Avila that a proclamation or declaration which, in doubtful phrases or by implication, recognized the existence of any pretended organization in the United States independent of the government which accredited me, and which alone has power to make treaties and conduct diplomatic intercourse, would be regarded as a most unfriendly act by the President;" and the proclamation did not, in fact, recognize such government.<sup>2</sup>

The northern nations were more friendly. The Prussian proclamation was issued by the Minister of Commerce at the desire, if not in accordance with the request, of our Minister, who wrote, after its issue, that while not what he had expected, as it was not in the King's name, it would doubtless have the desired effect.<sup>3</sup> It recited "the conflict that has broken out among the North American States."<sup>4</sup> Holland, in a similar proclamation, recited "the existing disturbances in the United States of America," "the contest which seems to be in existence in the United States of North America."<sup>5</sup> Belgium was asked by our Minister to issue a proclamation against enlistment and privateering. Her Minister said that the matter had been considered, but the proclamations of England and France had not seemed to satisfy us. Our Minister replied, —

"That he was correct in his views of our sentiments as to the course which England and France had seen fit to pursue. We could not look upon the recognition of belligerent rights to those who, under our laws, were rebels, and before we had attempted to employ forcible means of coercion, as evincing the friendly spirit we had a right to expect; that these people would be treated none the less as rebels on the land, as

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<sup>1</sup> 51 Br. & For. St. Pap. 97.

<sup>4</sup> *Ib.* 70.

<sup>2</sup> 51 Br. & For. St. Pap. 123.

<sup>5</sup> 51 Br. & For. St. Pap. 117.

<sup>3</sup> 51 Br. & For. St. Pap. 66, 67.

pirates on the seas, — they or those, of whatever nationality, who joined them; and we counted, on the part of Belgium, upon no such qualification of our citizens in rebellion, whom we were engaged in submitting to the action of our laws.”

Belgium issued a proclamation similar to that of Prussia, and was thanked for it by our Minister.<sup>1</sup>

The points chiefly insisted upon by the government of the United States at this time seem to have been these: —

First, there should be no haste in recognizing belligerency.

Second, recognition should not be given in such a way as to influence the result of the contest.

Third, recognition should go no further than the immediate occasion required.

The course of the United States, as we have examined it, is entirely consistent with these contentions.

In the first place, we have not recognized belligerency prematurely. We never recognized the belligerency of Greece, because the civil war in that country did not inconvenience us at all, or call for our interference. We recognized civil war in Canada when our own soil was invaded; and we recognized the belligerency of Spanish America, eight years after it was a fact, when our ocean commerce became involved in the contest, which was largely naval.

In the second place, our recognition has not been given in such a way as to affect the result of the contest. The policy of allowing other people, even those of this continent, to settle their constitutions for themselves has been adhered to by the United States, no matter how great our interest in the result of the decision. We have constantly refused to take measures for securing the prevalence of our own ideas of government, even in those parts of America nearest to us. As President Grant said, at the time of the Cuban insurrection of 1869, “The United States have no disposition to interfere with the existing relations of Spain to her colonial possessions on this continent.”<sup>2</sup>

Third, our recognition has gone no further than the immediate occasion required. One of the most offensive parts of the Queen’s

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<sup>1</sup> 51 Br. & For. St. Pap. 76, 77.

<sup>2</sup> Message of 1869, Wharton’s Dig. of Intern. Law, vol. i. p. 383. See to the same effect Secretary Van Buren (1829), *ib.* p. 175; President Jackson (1836), 24th Cong. 2d Sess., Sen. Doc. No. 20; Secretary Webster (1842), Whart. Dig., vol. i. p. 177; Secretary Everett (1852), *ib.* p. 379; Secretary Seward (1864), *ib.* p. 184.

proclamation at the time of our Civil War was the warning not to break any blockade lawfully established "by or on behalf of either of the said contending parties." The care with which this rule has usually been observed is evident. In Madison's proclamation, already referred to, it was necessary only to forbid hostile expeditions "against the dominions of Spain." This served every legitimate purpose, and gave no offence to Spain. When Colombia requested that the insurgent vessels be held pirates, the United States refused the request, but expressly declared that it was not a general recognition of the insurgent forces as belligerents.

In applying the foregoing principles to the actual case we meet with all the embarrassment that has already been pointed out. As to the fact of belligerency, we know nothing with sufficient certainty to justify action. We know from common report that fighting is being done, and that the avowed purpose of one party is to free Cuba from the control of Spain. But whether a civil government has been constituted which controls the military operations who can say? By recognizing belligerency we free Spain from responsibility for wrongs done by the belligerents: to what organization can we look in place of Spain? Where is its capital? Who is its Minister of Foreign Affairs? What are its actual territorial boundaries? At what point in Cuba shall we cease to be within the control of Spain, and come within the power of another *de facto* government? These questions may be answerable; we cannot truthfully say that the insurgents are belligerents unless we know that they are answerable, and that we may, at least upon occasion, discover the answers. Still further, can we be sure that they are observing the rules of civilized war? We have no information on this subject except from Dame Rumor, and she says one thing to-day, and another to-morrow. Unless we are certain on this point, we must withhold recognition.

We are not yet sure, therefore, of two facts which are essential to legal belligerency; and, until we are assured, we cannot candidly say, There is a civil war between Spain and the Province of Cuba. But suppose those facts to be satisfactorily established, how far is it necessary for us to take notice of the war?

The ordinary occasion for the recognition of belligerency — hostilities upon the sea — is here absent. The insurgents, so far as we know, possess no seaports; they certainly have no navy; we have no notice of any blockade. Nor is there any danger of invasion of this country by either party. The only occasion for action

on the part of the United States would seem to be the restraint of our own citizens from breaches of our neutrality laws. For the purpose of warning our citizens against such breaches a proclamation like that of President Madison would seem sufficient: "Whereas information has been received that sundry persons, citizens of the United States, are conspiring together to set on foot a military expedition against the dominions of Spain, with which the United States are happily at peace, I have thought fit to issue this my proclamation." If this is enough for the purpose, anything more would be a gratuitous insult to Spain, contrary to our traditions, and opposed to the principles which we insisted upon in our own time of trouble. This is not in any legal sense a recognition of belligerency.

My conclusion is confirmed by the action of this government at the time of the last Cuban revolt, twenty-five years ago. That insurrection lasted ten years, and was apparently more widespread and nearer to success than the present one; but President Grant constantly refused to recognize the insurgents as belligerents.

In 1875, eight years after hostilities began, and six years after he had first referred to the insurrection in his annual message, Grant, after defining belligerency and stating when its existence should be recognized, in similar terms to those used above, continued: —

"I fail to find in the insurrection the existence of such a substantial political organization, real, palpable, and manifest to the world, having the forms and capable of the ordinary functions of government toward its own people and to other States, with courts for the administration of justice, with a local habitation, possessing such organization of force, such material, such occupation of territory, as to take the contest out of the category of a mere rebellious insurrection, or occasional skirmishes, and place it on the terrible footing of war, to which a recognition of belligerency would aim to elevate it. The contest, moreover, is solely on land; the insurrection has not possessed itself of a single seaport whence it may send forth its flag, nor has it any means of communication with foreign powers except through the military lines of its adversaries. No apprehension of any of those sudden and difficult complications which a war upon the ocean is apt to precipitate upon the vessels, both commercial and national, and upon the consular officers of other powers, calls for the definition of their relations to the parties to the contest. Considered as a question of expediency, I regard the accordance of belligerent rights still to be as unwise and premature, as I regard it to be, at present, indefensible as a measure of right."<sup>1</sup>

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<sup>1</sup> Seventh Annual Message, 1875; 1 Whart. Dig. Int. Law, 406.

That this language accurately describes the present situation we must believe from all trustworthy evidence as to the nature of the struggle that has reached us. It is our evident duty to observe strict neutrality, and to take no step which would give the insurgents an international status, and thus hold out to them delusive and fatal hopes. It is reassuring to see that in his annual Message the President has acted with care and moderation, and in accordance with the requirements of law.

*Joseph H. Beale, Jr.*